

Remarks

Reconsideration and withdrawal of the rejections set forth in the Office Action dated December 22, 2003 are respectfully requested. Applicants thank the Examiner for the courtesy of a telephone conference, held on April 7, 2004, to discuss the proposed claim amendments.

Applicants petition for a one-month extension of time in which to file this amendment. A separate petition is enclosed.

I. Amendments

The amendments to the specification have been made to correct typographical errors.

Claim 1 as amended recites a peptide having at least 50% identity with SEQ ID NO:4. Basis for the inclusion of the percent identity limitation is found on page 13, lines 12-20, with specific reference to line 18. The claim is also amended to recite that the peptide has activity as an antagonist of  $\delta$ PKC, as supported on page 15, lines 1-2.

Claims 2 and 5 are amended for consistency with claim 1.

Support for new claims 59-70 is set forth in the table below.

<b>Claim No.</b>	<b>Basis in Specification</b>
59	page 13, line 19
60	page 13, line 19
61, 62, 63	page 15, lines 2-7; page 27, lines 25-26
64	original claim 1
65	page 15, lines 2-7; page 27, lines 25-26
66	original claim 1; page 15, lines 1-2
67	page 15, lines 2-7; page 27, lines 25-26
68	original claim 1
69	page 15, lines 2-7; page 27, lines 25-26
70	original claim 1

The foregoing amendments to the specification and claims do not introduce new matter.

**II. Rejections under 35 U.S.C. § 112, first paragraph**

Claims 1, 2, 5, and 7-9 were rejected under 35 U.S.C. §112, first paragraph as containing subject matter not described in the specification in such a way as to reasonably convey to a skilled artisan that at the time the application was filed, the inventor was in possession of the claimed invention. Specifically, the Examiner objected that the claims recited derivatives and fragments of SEQ ID NO:4 without identifying what function the derivatives or fragments were to possess.

Claim 1 is amended to specify that the claimed peptides have at least 50% identity with SEQ ID NO:4, eliminating the objected-to terminology "derivatives and fragments". Also, the claim is amended to recite that the peptides have activity as antagonists of  $\delta$ PKC.

Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §112, first paragraph.

**III. Rejections under 35 U.S.C. § 112, second paragraph**

Claims 1, 2, 5, and 7-9 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Examiner asserted that claims 1, 2, and 3 are indefinite because it is unclear whether the language of the claim is open or closed.

Claim 1 has been amended to recite "A peptide comprising...", thus adding a open-ended transitional term vis-à-vis the inclusion of other elements, while adding specificity as to the permissible degree of variation from SEQ ID NO:4 through the 50% identity limitation. In light of this amendment, withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

**IV. Rejections under 35 U.S.C. § 102**

Claims 1, 5, and 7-9 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Geysen, U.S. Patent No. 4,708,871. This rejection is respectfully traversed for the following reason.

A. The Present Invention

The present invention relates to  $\delta$ V1-1 peptides having homology to SEQ ID NO:4 that is greater than or equal to 50%.

B. The Cited Art

GEYSEN describes peptides having the antigenicity of the VP1 protein of foot-and-mouth disease virus. In one embodiment, the peptide has an amino acid sequence of GDLGSIA, GDLGSIA, DLGSIA, DLGSI, and antigenically active modified sequences of these (Col. 4, lines 6-19), including "YDLGSI" (Col. 13, Table 1; Col. 5, lines 11-12).

C. Analysis

The standard for lack of novelty, that is, for anticipation, is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. M.P.E.P. § 2131

The peptides encompassed by the present claims have a sequence that is greater than or equal to 50% homologous to SFNSYELGSL (SEQ ID NO:4).

The synthetic peptide taught by Geysen and noted by the Examiner has the amino acid sequence GDLGSI (Col. 5, line 7), which in one embodiment is modified to YDLGSI (Table 1, Col. 13). The sequence YDLGSI has only 4 residues in common with the claimed sequence SFNSYELGSL, and thus does not satisfy the 50% identity requirement. Thus, the peptide sequences taught by Geysen do not anticipate the present claims, nor can they render the present claims obvious.

Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §102.

V. Conclusion

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the applied art. A Notice of Allowance is, therefore, respectfully requested.

If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 838-4402.

Respectfully submitted,

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